

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:04cr250

THIS MATTER is before the Court upon motion of the defendant pro se for a reduction of sentence based on the retroactive amendments to the United States Sentencing Guidelines relating to crack cocaine.¹ (Doc. No. 565).

On October 18, 2004, the defendant was indicted for conspiracy to possess with intent to distribute five kilograms or more of cocaine and fifty grams or more of cocaine base in violation of 21 U.S.C. §§ 841 and 846 (Count One) and three counts of possession with intent to distribute at least five grams but less than 50 grams of cocaine base in violation of 21 U.S.C. § 841 (Counts Forty, Forty-One and Forty-Two). (Doc. No. 104). The Government then filed an information detailing the defendant’s three prior felony drug convictions, pursuant to 21 U.S.C. § 851. (Doc. No. 192). On February 4, 2005, the defendant filed a Plea Agreement in which he agreed to plead guilty to Count One and acknowledged that the mandatory sentence was life imprisonment. (Doc. No. 201 at 1). Accordingly, the Court sentenced him to life imprisonment.² (Doc. No. 325: Judgment).

¹ This claim was raised in a Motion to Vacate pursuant to 28 U.S.C. § 2255 but docketed as a separate motion. The defendant sought the Court's jurisdiction for this claim under 18 U.S.C. § 3582. (Doc. No. 565: Motion at ¶ 88).

² That sentence was affirmed by the Fourth Circuit. (Doc. No. 531: Opinion).

This sentence resulted from a statutory penalty, 21 U.S.C. §§ 841(b)(1)(A)(ii)(II), (iii), 846, and 851; thus, the change in the guidelines does not affect the defendant's sentence. Neal v. United States, 516 U.S. 284, 296 (1996) (retroactive amendment to guidelines does not alter statutory mandatory minimum); United States v. Hood, 556 F.3d 226, 233 (4th Cir. 2009).

IT IS, THEREFORE, ORDERED that the defendant's motion is **DENIED**.

The Clerk is directed to certify copies of this order to the defendant, the Community Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: February 24, 2011



Robert J. Conrad, Jr.
Chief United States District Judge

